

INTERIOR BOARD OF INDIAN APPEALS

Estate of Cyprian Buisson

53 IBIA 176 (05/19/2011)

Dismissing and Denying Petitions for Reconsideration of: 53 IBIA 103



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS INTERIOR BOARD OF INDIAN APPEALS 801 NORTH QUINCY STREET SUITE 300 ARLINGTON, VA 22203

ESTATE OF CYPRIAN BUISSON)	Order Dismissing and Denying Petitions for Reconsideration
)	Docket No. IBIA 09-051-1
)	May 19, 2011

On March 18, 2011, the Board of Indian Appeals (Board) affirmed the January 26, 2009, Order Denying Reopening by Indian Probate Judge Albert C. Jones (IPJ) in the Estate of Cyprian Buisson, deceased Standing Rock Sioux Indian, Probate No. P000002626IP. 53 IBIA 103. The IPJ, in turn, declined to reopen the June 29, 2007, Order Determining Heirs and Decree of Distribution entered by Indian Probate Judge P. Diane Johnson, who determined that Decedent's sole heir was his non-Indian widow, Lillian E. Urbersetzig Buisson. The Board has now received two letters, forwarded to the Board by the Standing Rock Agency, Bureau of Indian Affairs (BIA), seeking to "reopen" this estate. One letter, received on April 18, 2011, is written by Zelda C. Biegler Payne on her behalf and on behalf of her brother, Robert A. Biegler (collectively, the Bieglers); the second letter, received on April 22, 2011, is signed by Jeffrey McLaughlin, Sr., Roland McLaughlin, Phillip McLaughlin, and a fourth individual whose signature is unreadable (collectively, the McLaughlins). We construe both letters as petitions for reconsideration. See 43 C.F.R. § 4.315. We dismiss the McLaughlins' petition as untimely and we deny the Bieglers' petition for failure to identify any error in the Board's decision.

Petitions for reconsideration of a Board decision "must be filed with the Board within 30 days from the date of the decision. . . ." 43 C.F.R. § 4.315(a); Pappin v. Eastern Oklahoma Regional Director, 50 IBIA 353 (2009); First v. Rocky Mountain Regional Director, 42 IBIA 188 (2006). Thus, any persons interested in seeking reconsideration of the Board's March 18 decision had until April 18, 2011, to do so by mail or by personal delivery.²

¹ The letter has only signatures and no printed or typed names.

² The 30th day after the Board's decision fell on Sunday, April 17. When the last day for filing a pleading with the Board falls on a Saturday, Sunday, holiday, or other non-business day, the time period automatically is extended to the next business day, which in this case was Monday, April 18, 2011. *See* 43 C.F.R. § 4.310(c).

Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. 43 C.F.R. § 4.315(a); *Estate of Robert Henry Moran, Sr.*, 45 IBIA 26 (2007). Subsection 4.315(a) requires any party petitioning for reconsideration to provide "a detailed statement of the reasons why reconsideration should be granted."

We dismiss the McLaughlins' petition for reconsideration on the grounds that it is untimely. They did not mail or deliver their petition for reconsideration to the Board, but sent it to the Superintendent of BIA's Standing Rock Agency. The Agency then forwarded the petition to the Board where it was not received until four days after the time for seeking reconsideration had lapsed.³ Because the McLaughlins sent their petition to the wrong entity, they must therefore bear the risk that their appeal would not reach the Board in a timely manner.⁴

We deny the Bieglers' petition because it fails to set forth any substantive disagreement with our decision. The petition seeks reconsideration for "breach of trust," and because the Bieglers believe that they are rightfully entitled to inherit as next-of-kin of Cyprian Buisson instead of his widow. Such conclusory assertions lack any basis, let alone set forth extraordinary circumstances, justifying reconsideration. The Bieglers do not provide any factual or legal support for their claims nor do they elaborate on or show why these claims undermine our March 18 decision. Moreover, the breach of trust claim is raised for the first time in the petition for reconsideration. The Board ordinarily does not consider claims raised for the first time in a petition for reconsideration, *Estate of Reginald Paul Walkingsky*, 52 IBIA 270 (2010), and there is no reason to depart from this practice under the present circumstances. To the extent that the Bieglers seek damages for their breach of trust claim, this Board lacks authority to award monetary relief. *Estes v. Acting Great Plains Regional Director*, 50 IBIA 110, 117 n.7 (2009).⁵

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³ The McLaughlins' petition for reconsideration does not differ in substance from the Bieglers' petition. Therefore, even if we were to consider the merits of their petition, we would deny reconsideration for the same reason that we now deny reconsideration of the Bieglers' petition. *See infra*.

⁴ The parties were provided with a copy of the Board's regulations with its March 5, 2009, Pre-Docketing Notice, which includes § 4.315 entitled **Reconsideration of a Board decision** and informs parties of the timeframe for seeking reconsideration as well as advises that such petitions must be filed *with the Board* within that timeframe. Therefore, the parties were aware of the timeframe and procedure for seeking reconsideration.

⁵ We also note that Robert Biegler likely lacks standing to pursue reconsideration because he does not appear to be a putative heir. Both Robert and his sister, Zelda, are related to (continued...)

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses the McLaughlins' petition for reconsideration as untimely, and denies the Bieglers' petition for reconsideration of 53 IBIA 103.

	I concur:	
// original signed	// original signed	
Debora G. Luther	Steven K. Linscheid	
Administrative Judge	Chief Administrative Judge	

⁵(...continued)

Buisson through their mother, Roletta Louise Derby, who died testate in 2000. In her will, which was approved in proceedings to probate her estate, see In the Matter of the Estate of Roletta Louise Derby, Probate No. P000002636IP (Dep. of Int. Mar. 27, 2006), Roletta devised the whole of her estate to her daughter, Zelda. Therefore, unless Robert is related to Cyprian Buisson through another relative, he is ineligible to inherit any portion of Buisson's estate, and would lack standing to petition for reconsideration.